

EXHIBIT

#54

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
CASE NO. 07-15195(MS)
CHAPTER 11

In re BAYONNE MEDICAL CENTER, :

Debtor, :

ORIGINAL

BAYONNE MEDICAL CENTER, :

Debtor and

Debtor-in-Possession; and :

ALLEN D. WILEN, in his :

capacity as Liquidating :

Trustee and Estate :

Representative for the Estate :

of Debtor, Bayonne Medical

Center, :

DEPOSITION OF:

ROBERT H. EVANS

VOLUME I

(Pages 1-236)

Plaintiff, :

-vs- :

BAYONNE/OMNI DEVELOPMENT, :

L.L.C., a New Jersey limited

liability company; et al., :

Defendants. :

B E F O R E:

SHARON B. STOPPIELLO, a Certified Court
Reporter and Notary Public of the State of New
Jersey, at the offices of GREENBAUM, ROWE, SMITH &
DAVIS, L.L.P., 75 Livingston Avenue, Roseland, New
Jersey, on MONDAY, JUNE 21, 2010, commencing at 9:19
a.m., pursuant to Notice.

DepoLink

Court Reporting & Litigation Support Services

Phone (973) 353-9880 Fax (973) 353-9445

www.depolinklegal.com

1 at 12:05 of 5 mill from Omni Asset Management was
2 'no good' and they, Omni, are stating that the
3 pledge was made 'under duress.' We had received
4 confirm." At any time before this litigation did it
5 come to your attention that anyone was claiming that
6 Omni was claiming that the pledge was made under
7 duress?

8 A. It did not.

9 Q. At any time before this litigation
10 began did it come to your attention from whatever
11 source that a representative of BMC was taking the
12 position that the Omni pledge was renegotiated and
13 as a result became a nullity?

14 MR. FALANGA: Objection.

15 A. Could you restate that one more time?
16 I'll try to listen really close.

17 Q. At any time before this litigation
18 began did it come to your attention that anyone on
19 behalf of BMC took the position that the Omni pledge
20 was renegotiated with Omni, and as a result of the
21 renegotiation became of no force and effect?

22 MR. FALANGA: Objection.

23 A. I actually did come to hear, but I
24 don't recall who I heard it from, that the pledge
25 was renegotiated as a result of the ultimate closing

1 with respect to the SNF building, and it had
2 something to do with the size of the project
3 becoming smaller and eliminating the rent.

4 Q. The leaseback?

5 A. The leaseback.

6 MR. FALANGA: Objection.

7 Q. And you don't know who it was that
8 you heard that from?

9 MR. FALANGA: Objection.

10 A. I don't recall who, no, but I do
11 recall hearing it.

12 Q. Before the litigation began?

13 A. Correct.

14 MR. FALANGA: Objection.

15 MR. GRUEN: How much more time do I
16 have, timekeeper?

17 MR. FALANGA: Well, you're
18 technically out of time. I respectfully decline the
19 "timekeeper" designation, but it is after 12:30.

20 MR. GRUEN: Well, if I've used up my
21 time, I'm not entitled to anymore.

22 (A discussion is held off the record,
23 whereupon a lunch recess is taken.)

24 CROSS-EXAMINATION BY MR. FALANGA:

25 Q. Mr. Evans, again, for the record, my

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In re BAYONNE MEDICAL CENTER, :

Debtor, :

ALLEN D. WILEN, :

Plaintiff, :

DEPOSITION OF:

HERMAN BROCKMAN

-VS- :

BAYONNE/OMNI DEVELOPMENT, :
LLC, et al., :

Defendants.

B E F O R E:

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Reporter and Notary Public of the State of New
Jersey, at the offices of EDWARDS, ANGELL, PALMER &
DODGE, L.L.P., One Giralda Farms, Madison, New
Jersey, on MONDAY, MARCH 29, 2010, commencing at
12:28 p.m., pursuant to Notice.

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1 A Okay.

2 Q "QUESTION: How about your
3 understanding of a pledge to the foundation?
4 Is it your understanding in your experience
5 as a trustee for the board that a pledge is
6 legally binding?

7 "ANSWER: It isn't, no."

8 Was that answer of yours accurate?

9 A I believe so.

10 Q I'm going to continue reading.

11 "QUESTION: You believe it's not.

12 "ANSWER: We've had an awful lot of a
13 people who made all kinds of pledges and
14 never paid them to the foundation.

15 "QUESTION: That's not what I was
16 asking. I was asking if you knew whether or
17 not a pledge is a legally binding obligation
18 or not? And your understanding is you don't
19 believe it is?

20 ANSWER: I don't believe it is, no.

21 If it was we would have had a lot of money
22 in the hospital that never came in."

23 Is that answer accurate?

24 A Yes.

25 Q And I'm continuing on Line 23 on Page

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1 Q As far as you know, did the
2 foundation ever sue anyone to collect on a pledge?

3 MR. PIZZI: Objection.

4 A Not that I know of.

5 Q As far as you know, did the hospital,
6 BMC, ever sue anyone to collect on a pledge?

7 A Not that I know of.

8 Q Withum, Smith & Brown, do you know
9 who they are?

10 A Accounting firm.

11 Q Did they prepare an audit for BMC
12 for, among other years, the year 2005?

13 A Yes, I believe they did.

14 Q And did they, do you know, show on
15 the statements that they prepared the \$5,000,000
16 pledge that we've been talking about here this
17 morning as an asset of either the foundation or BMC?

18 A Yes, I believe they did.

19 Q And were you on the BMC finance
20 committee?

21 A As chairman I was ex officio member, but I
22 never attended any finance committee meetings.

23 Q Were you present at any meeting at
24 which there was a discussion with WS&B about why it
25 is that they showed this pledge on the hospital

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1 Bayonne Medical Center. I have a few questions for
2 you.

3 You told us that you were introduced to Mr.
4 Eisenreich sometime first somewhere at the hospital,
5 right?

6 A Yes.

7 Q And do you recall that that was
8 around the time you heard about the pledge from Mr.
9 Evans?

10 A I don't know if it was around the same time
11 or not. I was just there, he was passing in the
12 hall and they introduced the two of us and I walked
13 away.

14 Q Was it at the time that the skilled
15 nursing facility was being talked about?

16 A Yes.

17 Q And you told us that there were a
18 couple of other entities that were competing for a
19 role in the development of the skilled nursing
20 facility that was associated with Bayonne Medical
21 Center, right?

22 A Yes.

23 Q Did you, when you heard about the
24 pledge, connect the pledge that Mr. Eisenreich made
25 or his entities made to the hospital with the

1 selection of Mr. Eisenreich's entities as the entity
2 to partner with on the skilled nursing facility?

3 MR. GRUEN: Objection to form.

4 A No.

5 Q Previously you were shown an exhibit
6 called D-19. If you could look in that pile of
7 exhibits.

8 A Yes, I read this letter.

9 Q Now, you told us that you first saw
10 this when Mr. Eisenreich brought it to your
11 attention, correct?

12 A Yes.

13 Q Where were you at the time?

14 A In the pharmacy.

15 Q What's "the pharmacy"?

16 A Brockman's Pharmacy.

17 Q Where is it located?

18 A 78 Avenue C, Bayonne, New Jersey.

19 Q And are you the owner of that
20 pharmacy?

21 A No more. I sold it five years ago.

22 Q Is any member of your family
23 associated with the pharmacy other than you?

24 A No.

25 Q But you still work there?

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1 Q Let me show you what was previously
2 marked at the 2004 Examination as Exhibit D-23. And
3 there are two parts of it: One is a document dated
4 December 13, 2005, and another is a document dated
5 November 30th, 2005. And I'd ask you to look at
6 these and tell me whether you've ever seen them
7 before.

8 MR. GRUEN: Mr. Novak.

9 MR. NOVAK: Off the record.

10 (A discussion is held off the record.)

11 A No, I never saw this.

12 Q Neither of the documents, the
13 December nor the November document?

14 A No. No.

15 Q Did it ever come to your attention,
16 through reports by Mr. Evans or otherwise, that the
17 long-term care project was being pursued as a
18 partnership between BMC and an Eisenreich entity?

19 A Yes.

20 Q And ultimately a partnership between
21 BMC and an Eisenreich entity was not formed for the
22 purpose of developing this project; is that correct?

23 MR. PIZZI: Object to the form.

24 A Yes.

25 Q And do you know why the partnership

1 approach to the development of a long-term care
2 facility did not come to fruition?

3 A We were told it would affect our
4 not-for-profit status and also it would affect the
5 bond refinancing.

6 Q Who was it who told you that?

7 A Mr. Evans.

8 Q And did Mr. Evans then say that those
9 considerations made it impossible or impractical or
10 otherwise to pursue the partnership approach?

11 A I don't know what he said, just that it
12 couldn't be done.

13 Q It couldn't be done that way. And
14 when Mr. Evans said that it couldn't be done that
15 way, did he say then or thereafter how the project
16 could be done consistent with those constraints?

17 A Yes, he said that it would have to be a sale
18 of the Bell building property.

19 Q And ultimately was the Bell building
20 property sold to an Eisenreich entity?

21 A Yes.

22 Q From the time that Mr. Evans
23 announced that the project would have to be a sale
24 and couldn't be a partnership until the sale
25 actually took place, were there negotiations between

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1 A Fair market value was to mean what the
2 property was worth compared with any other property
3 for sale.

4 Q And who told you that fair market
5 value was what BMC was looking to accomplish in
6 connection with negotiation of the sale price with
7 Eisenreich?

8 A I don't know who told us.

9 MR. GRUEN: Off the record:

10 (A discussion is held off the record.)

11 Q I'm showing you from the package of
12 exhibits previously marked at Vincent Lombardo's
13 deposition an exhibit that had been previously
14 marked to that D-4 at your February 2009
15 examination. It purports to be minutes. It's
16 entitled "Board of Trustee Meeting, June 8th, 2006
17 Minutes." Have you seen this document before?

18 A I'm sure I have.

19 Q And if you would turn to Page 4, and
20 I'm going to read this into the record because it's
21 short, under the heading "Skilled Nursing Facility,"
22 quote, "By way of background, Mr. Brockman advised
23 that initially we were seeking to structure the SNF
24 project as a land lease arrangement with Omni Asset
25 Management. It has recently come to light that this

1 will not be an acceptable arrangement, given Bayonne
2 Medical Center's not-for-profit status." And I'm
3 going to stop the quote there. The inability of BMC
4 to structure the transaction as a land lease
5 arrangement with Omni Asset Management, was that
6 land lease arrangement part of the proposed
7 partnership arrangement?

8 A Yes.

9 Q Who was it, if anyone, who told you
10 that it was not an acceptable arrangement to enter
11 into a land lease arrangement with Omni Asset
12 Management given Bayonne Medical Center's
13 not-for-profit status?

14 A I believe it was Rob Evans.

15 Q Anyone else, or was he the exclusive
16 source of that information?

17 A He was the spokesman. I don't know the
18 source.

19 Q I'm continuing with the quote. "In
20 order for Raymond James to proceed with the bond
21 financing and to move forward with the SNF project,
22 Mr. Brockman stated it may be necessary to sell the
23 land at the current market rate. He explained
24 further details of this proposal, and added that all
25 necessary covenants will be included to protect and

1 ensure the best interests of Bayonne Medical
2 Center." Do you recall making this report to the
3 board in June of 2006?

4 A I don't recall it, but it's in the minutes,
5 so I said it.

6 Q Do you know what further details of
7 the proposal it was that you shared with the board,
8 if any, on June 8th, 2006?

9 A No.

10 Q Do you know what the "necessary
11 covenants" were that this document refers to and
12 says that you discussed before the board kat this
13 meeting in June 2006?

14 A I believe the covenants were something to do
15 with lines going through the property underground or
16 something, whether it was electric, gas, I don't
17 know what it was.

18 Q Did the covenants, as you understood
19 them, include commitment of Omni Asset Management to
20 develop the Bell building site for an SNF?

21 A Yes, it had to be part of the agreement,
22 yes.

23 Q And that was part of the necessary
24 covenants that you explained to the board would be
25 included in the deal to protect the interests of

1 BMC?

2 A Yes. Are we finished with this?

3 Q Just hold onto them for one second.

4 On the next page, Page 5, I'm going to read
5 this and then I'm going to give it back to you.

6 "With no further questions, Mr. Brockman presented
7 the following resolution: For action: The board of
8 trustees of Bayonne Medical Center approves and
9 authorizes administration to proceed in this matter
10 and if deemed necessary, arrange for the sale of the
11 land at market value. Upon a motion duly made,
12 seconded and unanimously carried, this resolution
13 approved."

14 A I read it already.

15 Q Do you recall that event?

16 A I don't recall it, but it's in the minutes,
17 so I said it.

18 Q It says here that the administration
19 is authorized to proceed if necessary to arrange for
20 a sale of the land at market value. Do you know
21 what that means, "if necessary"?

22 A No, I don't.

23 Q So I'm going to ask you to open to
24 Page 90 of the transcript of your 2004 Examination.

25 A Okay.

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1 that he had a signed contract with Robert
2 Evans.

3 "QUESTION: And when you say 'close
4 the deal,' what was your understanding of
5 the deal or what did Mr. Eisenreich say was
6 the deal at that time?

7 "ANSWER: Well, he showed me a
8 contract and it stated that he would buy the
9 property, I believe, for \$2,000,000."
10 And that answer is accurate?

11 A Yes.

12 Q Had you ever met Mr. Eisenreich
13 before?

14 A Once, I believe, early on. I was introduced
15 to him, that's all.

16 Q In what context, do you remember?

17 A He was in the hospital, I guess for a
18 meeting, and I happened to be in the hospital. They
19 just introduced him to me.

20 Q What, if anything, did you say to Mr.
21 Eisenreich after he showed you the contract and
22 stated that he was prepared to buy the property for
23 \$2,000,000?

24 A I believe there was a portion of the
25 contract that said we were going lease back X amount

1 square feet of space, two floors. I told him I
2 didn't need the space and I would not accept it.

3 Q Before this exchange with Mr.
4 Eisenreich, had you seen the contract of sale
5 before?

6 A No.

7 Q Had you seen the lease before?

8 A No.

9 Q But you knew from your conversation
10 with Mr. Eisenreich or you knew before then that the
11 sale to Eisenreich included a leaseback by the
12 hospital of a portion of the space to the building?

13 A Yes, I believe Mr. Evans had stated that
14 fact earlier on, when they first talked about the
15 nursing home.

16 Q And that was that as part of the
17 \$2,000,000 deal, that the hospital would be leasing
18 back some space in the building to be built at the
19 Bell Street building location --

20 MR. PIZZI: Objection to form.

21 Q -- by Mr. Eisenreich's company?

22 A Yes.

23 Q Do you recall how much space Mr.
24 Evans said the hospital would be leasing in the
25 building to be built on the Bell Street property?

1 A I believe they said two floors. I don't
2 recall the amount of space.

3 Q And do you know what it was that the
4 hospital was intending to use those two floors for
5 had the lease been consummated?

6 A No.

7 Q Did anyone ever tell you what those
8 two floors were going to be used for the hospital's
9 purposes at that building?

10 A To.

11 Q So at this meeting when Mr.
12 Eisenreich presented the contract and told you that
13 he wanted to close, that's the same meeting at which
14 you said that the hospital would not lease back
15 space at the building; is that correct?

16 A Yes.

17 Q And did Mr. Eisenreich react to that
18 statement of yours?

19 A Yes. He had said he had a signed contract
20 by Mr. Evans.

21 Q For the leaseback space?

22 A Yes.

23 Q And what, if anything, did you say in
24 response to that?

25 A I said I would not go through with the

1 contract with those terms. I didn't need the space.

2 Q And did he react to that?

3 A Not that day. He came back I think a few
4 days later and agreed to terminate the lease part of
5 the contract.

6 Q Before agreeing to terminate the
7 leaseback part of the contract, did he have any
8 discussion with you about a price reduction on the
9 land sale as a result of eliminating the lease?

10 A Yes, he wanted to lower the price and I said
11 no.

12 Q Did he ultimately, as you understood
13 it, agree then to proceed with the deal without the
14 leaseback feature?

15 A Yes.

16 Q In the package of previously marked
17 documents is D-11. It's the document that's
18 referred to as "This agreement of August 24, '06,"
19 it's the lease, and the first heading says "Term of
20 the Lease."

21 A Okay.

22 Q You have that document in front of
23 you? I think it's D-11.

24 A Yes, I do.

25 Q And is this the lease that you told

EXHIBIT

#61

Magnaye, Lourdes

From: Auriemma, Robert
Sent: Tuesday, December 12, 2006 5:22 PM
To: Magnaye, Lourdes
Subject: Revised October P & L

Lourdes,
We need to copy the YTD Only version of the October financial statement file and make the following modification to the Net Loss from Operations:

Net (Loss) from Operations before Prior Year Adjustments: \$16,037

Eliminate Prior Year Adjustments:

2004 Medicare Settlement (5,100)

Restatement of Accounts Receivable: Write-off of 2005 Pledge (4,717)

Net (Loss) from Operations applicable to 2006 \$6,220

-
This change in format is only for a specific purpose to be used by Paul and will not be distributed to anyone else. The October statement once it is finalized will follow the usual one-line format.

Thanks,
Bob

12/13/2006

BMC031420